IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 1ST FEBRUARY 2007 / 12TH MAGHA 1928

Crl.MC.No. 4097 of 2005(B)

S.T.400/05 OF ADDITIONAL MUNSIFF/MAGISTRATE COURT, IRINJALAKKUDA(ORIGINALLY NUMBERED AS ST.7029/2004 of JUDL. MAGISTRATE OF FIRST CLASS COURT, IRINJALAKUDA)

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PETITIONER: ACCUSED:

SATHEERJAN, AGED 41 YEARS,
BUSINEES, S/O. P.A. KUNJU, PUTHENVEETTIL HOUSE,
S.N. PARK DESOM, ARANATTUKARA VILLAGE,
THRISSUR TALUK, THRISSUR DISTRICT.

BY ADV. SRI.K.B.MOHANDAS
SRI.LELLULAL T.G.THUNDATHIL

RESPONDENTS: COMPLAINANT & STATE:

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1. K.G. RAMAKRISHNAN, AGED 50 YEARS,
S/O. GOPALAN, KANGOOKKATTIL HOUSE,
P.O. THANISSERY, THRISSUR DISTRICT.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.S.RAJEEV
PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 01/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.4097 of 2005

Dated this the 1st day of February, 2007

ORDER

The petitioner faces indictment in a prosecution under Section 138 of the N.I Act. The prosecution has been initiated against the petitioner by the 1st respondent herein. The 1st respondent alleged that a cheque for Rs.2,75,000/- was issued by the petitioner to the complainant for the discharge of the amounts due from the accused to the complainant. That cheque was dishonoured by the bank. Notice of demand was issued. It was duly received and acknowledged. Reply was sent. In the reply a contention was raised in detail that the cheque was not issued for the due discharge of any legally enforcible debt/liability. A fairly specific case was taken up that the cheque was handed over as a blank signed cheque by the petitioner to one Thomas Alappatt to enable him to raise a loan from M/s.Aiswarya Finances. Payment was not made as demanded and the complainant in these circumstances came to court with the complaint. Cognizance was taken. The petitioner has already appeared before the Magistrate, it is submitted. He has come to this Court with a prayer that the powers under Section 482 Cr.P.C may be invoked to quash the complaint and to save him from the undeserved trauma of facing a criminal trial.

2. The prayer is to invoke the powers under Section 482 Cr.P.C to bring to premature termination a prosecution that has been launched under Section 138 of the N.I Act. The signature in the cheque is admitted. That the cheque leaf is issued by the bank to the petitioner to operate his account is not disputed. He has a defence that the cheque was not issued to the complainant but was handed over to a friend of his to enable such friend to raise amounts from a financier. The obvious suggestion is that the complainant must have been come into possession of that cheque from the friend of the petitioner or the Financer and is misutilising the cheque to stake false and untenable claim against the petitioner.

3. I shall scrupulously avoid any detailed discussion on merits about the acceptability of the allegations raised in the complaint or the acceptability of the plea which the petitioner wants to raise in his defence in the prosecution. Suffice it to say that after an anxious consideration of all the relevant inputs and after having carefully considered the submissions made by the learned counsel for the petitioner, I do not find any circumstance, which is sufficient to justify invocation of the extraordinary inherent jurisdiction available to this Court under Section 482 Cr.P.C. I shall carefully and scrupulously avoid any detailed discussion on merits, lest it should adversely affect the interests of the parties in the trial which is to

commence later. Suffice it to say that the petitioner must raise these contentions in the trial and establish the same.

4. In the result, this Crl.M.C is, dismissed, but with the specific observation that the dismissal of this Crl.M.C shall not in any way fetter the rights of the petitioner to raise all appropriate and relevant contentions before the learned Magistrate. No observations made by me in this order shall be reckoned as indicating the acceptance or rejection of any contention. I have only chosen to hold that the powers under Section 482 Cr.P.C cannot and need not be invoked.

(R.BASANT, JUDGE)

rtr/-